IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE JURISDICTION

APPEAL FROM ORDER NO.844 OF 2005

Late Savlaram Babaji (Nanji) Shejwal .. Appellant

vs

Ramakant Ramkrishna Tandel & ors .. Respts

Mr.Jitendra Sachdev for Appellant

..

CORAM : B.H.MARLAPALLE, J

DATE: 28th September, 2005

P.C.

1. Heard learned counsel for the appellant. The appellants are the L.Rs of the original defendant no.1 in Special Civil Suit No. 558 of 1998 and it appears that on his transfer to the Court of learned Civil Judge, Junior Division at Vashi the said suit came to be registered as Regular Civil Suit No.306 of 2001. By an order dated 19th August, 2003 the suit was dismissed and ex parte so

far as the defendants are concerned. The plaintiff therefore challenged the said order in Civil Appeal No.116 of 2003 which has been allowed by the learned IIIrd Additional District Judge at Thane vide judgment and order dated 1st April, 2004. The said decision of the lower appellate court is the subject matter of challenge in this appeal.

2. The lower Appellate Court has observed that though the Court of Civil Judge, Junior Division was existing at Vashi in the year 1990 the plaintiff preferred to file it before the learned Civil Judge, Senior Division at Thane and the said presentation was rightly made as the State of Maharashtra through the Special Land Acquisition Officer was impleaded as defendant no.2. The lower Appellate Court also noted that presentation of the suit before the learned Civil Judge, Senior Division, at Thane was in keeping with the provisions of section 32 of the Bombay City Civil Court Act, 1869 and therefore, the learned Civil Judge, Junior Division did not have the jurisdiction to entertain and try the suit. Thus, the transfer of the suit from the court of Civil Judge, Junior Division, at Thane to the Court of

Civil Judge, Senior Division at Vashi was erroneous and contrary to the scheme of section 32 of Bombay City Civil Courts Act, 1869. Obviously, the order passed by the trial court which was the subject matter of the appeal was without jurisdiction. The lower Appellate Court rightly set aside the order and restored the suit for being decided afresh by the learned Civil Judge, Senior Division.

3. The view taken by the lower Appellate Court cannot be faulted with and therefore, there is no reason to entertain this appeal. Appeal is therefore dismissed in limine and it is directed that R.C.S.No.306 of 2001 be heard and decided on its own merits as expeditiously as possible and in any case by 31st May, 2006.

(B.H.Marlapalle, J)